

# The Brown Act, Transparency, and Technology

COUNCIL, COMMISSIONS, COMMITTEES  
AND BOARDS

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# The Brown Act

- Purpose: facilitate public participation in local government decisions and curb misuse of the democratic process by secret legislation by public bodies.

*Cohan v. City of Thousand Oaks* (1994)

30 Cal.App.4<sup>th</sup> 547,555.

# How to Meet the Purpose of the Act

- All meetings shall be open and public, and all persons shall be permitted to attend, except when Brown Act authorizes otherwise
- Open and public deliberations and actions of the local agency legislative bodies
  - no secret ballots
- Meaningful public access to decision making
  - no private discussion, unless specific section in the Act allows a closed session
- Meetings held on a regular schedule and adhere to the agenda available prior to the meeting

# Who is subject to the Brown Act?

- Applies to all “legislative bodies” of all local agencies
- City Council
- Boards, commissions, and committees
  - Created by ordinance, resolution or formal action of a legislative body



# What Qualifies as a Meeting?

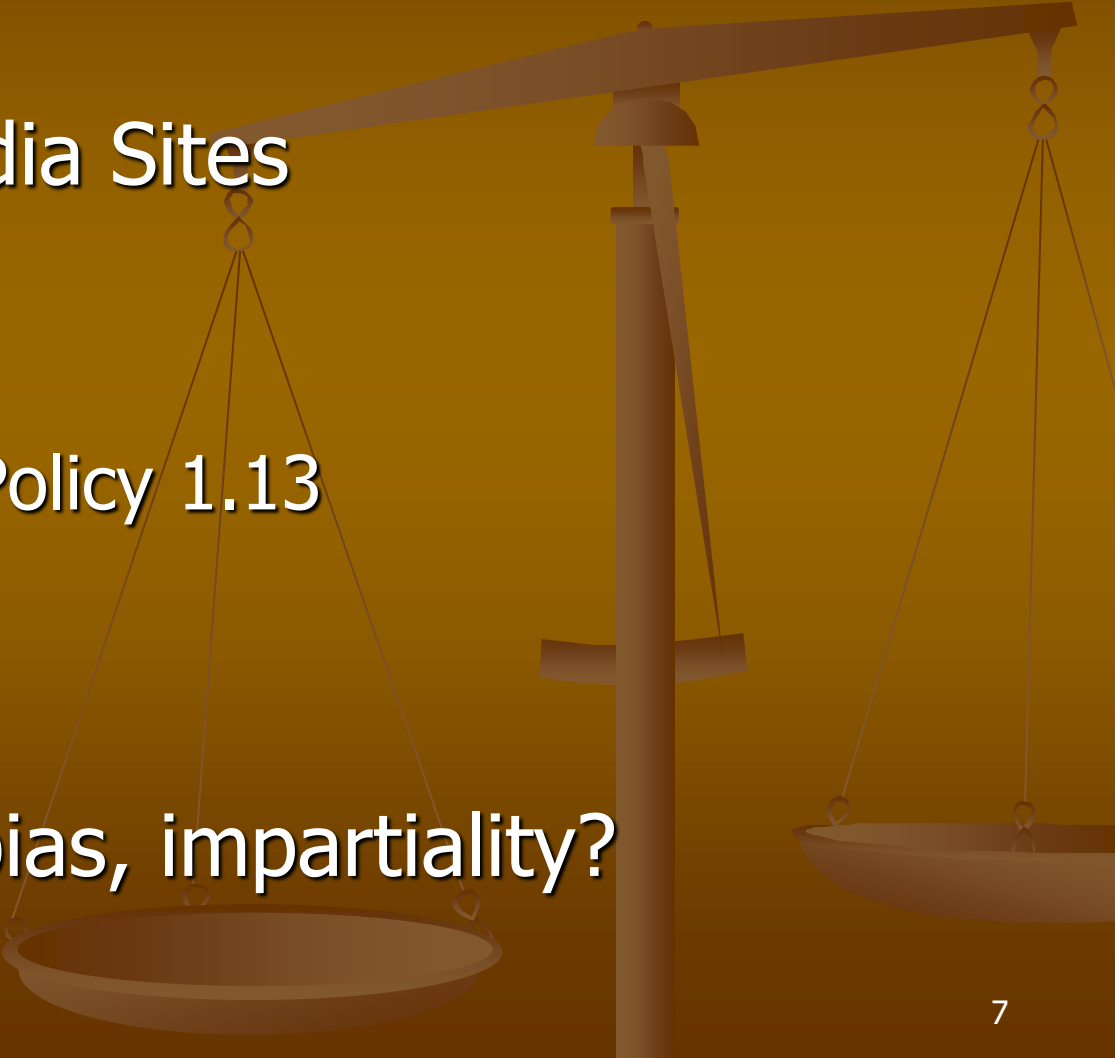
- Any congregation of a majority of the members
  - at the same time and place
  - to hear, discuss or deliberate
  - on any issue under the subject matter jurisdiction of the body.
- No action is required, such as at a workshop, it is still a meeting.
- If a majority of members merely receive information or discuss their view on an issue, that is a meeting.

# What Else Is a Meeting?

- E-mails: a majority of the body cannot e-mail each other regarding current issues under the body's jurisdiction because such discussions are not open to the public and are not accessible to the public.
- Serial Communications: a chain of communications from member A to member B, then member B to member C (until a quorum of members contacted) is prohibited.

# Social Media

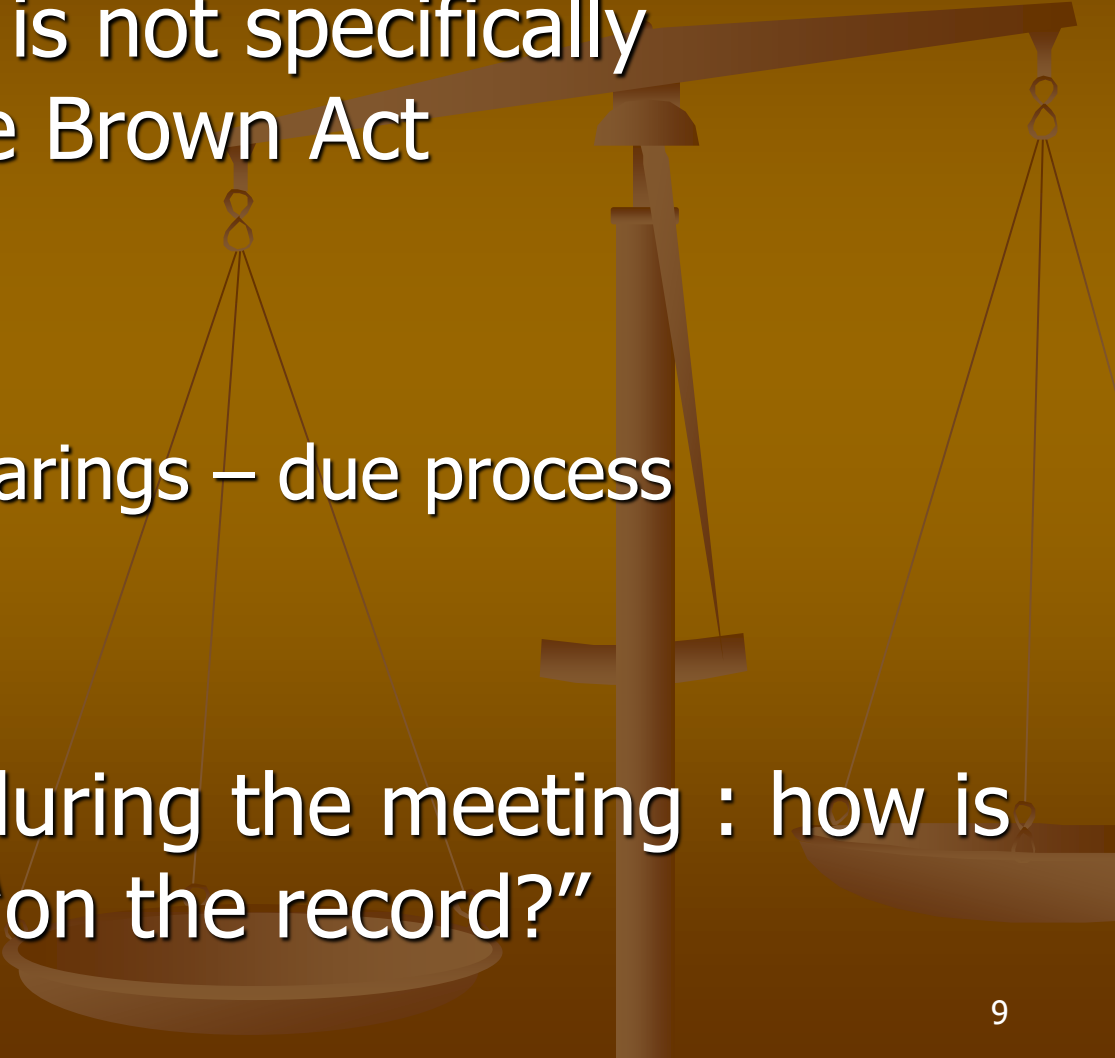
## Can that become a Meeting?

- City's Social Media Sites
    - City's Facebook
    - City's Twitter
    - Administrative Policy 1.13
  - Tweeting
  - Facebook
  - Other issues – bias, impartiality?
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# Managing Social Media

- Brown Act applies to social media.
- Best Practices: conduct City business in public and on City systems.

# Texting and E-communication: When is it a Meeting?

- Text messaging is not specifically addressed in the Brown Act
  - Caution:
    - Serial meetings
    - Adjudicatory hearings – due process
    - Transparency
    - Inattentiveness
  - Texts received during the meeting : how is decision based “on the record?”
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# Managing Texting, E-mails and Social Media Posts

- Public Records Act– Questions of its application to person devices is no longer an unanswered question.
  - In the City of San Jose the Cal Supreme Ct held: That a text, email and social media post may be a public record if it contains info relating to the conduct of the public's business even if in on a private device of a public employee.

# iPads, Tablets & Smartphones

- Modern technology provides a means of communications with others
- Provides a means to quickly access information via the internet
- Technology gives individuals greater access to information, but that access can be outside of the public process
  - Result: denying the public access to what is being considered by decision makers



# Ensuring Meaningful Public Participation

- Access to information considered by the Council, Commission, Committee or Board
  - What about:
    - Information received via text, e-mail, social media
    - Information from the internet
    - How do we ensure meaningful public participation
    - Due process and quasi-judicial matters
  - Disclosure of information is key



# What about meeting with a member of the public?

- Individual contacts between a member of the legislative body and a member of the public is exempt from the act (*ex parte* contacts).
- Council Policy 116 requires keeping a written record of *ex parte* contacts, and disclosure of any *ex parte* contacts either prior to or when the agenda item is called.
- Due process concerns: quasi-judicial matters – *ex parte* contacts raise fairness, bias, and impartiality concerns and should be avoided

# What is not a meeting?

- Majority of members at a:
  - Conference open to the public
  - Local public meeting
  - Open meeting of another body
  - Social or ceremonial event

**But**, cannot discuss any council, commission, committee or broad matters amongst the members.

# Holding Meetings

## ■ When

- Regular Meetings: agenda posted 72 hours prior (time set by ordinance, reso, or by-laws)
- Special Meetings: called by chair or majority, agenda posted 24 hours prior
- Emergency Meetings: immediately – “work stoppage, crippling activity, or other activity that severely impairs public health, safety, or both, as determined by a majority of the members” (real emergency – one hour notice to media outlets that have requested notice)

# Location of Meetings

- Where can a meeting be held?
  - In the City (within jurisdictional boundaries), unless a specific exemption applies
  - Specific exemptions:
    - Comply with a law or court order
    - Inspect property outside of city
    - Multiagency meeting
    - No meeting facility within the jurisdiction
    - Meeting with federal or state officials on a legislative or regulatory issue
    - At a facility outside of the jurisdiction, which is the topic of discussion
    - Closed session at legal counsel's office regarding pending litigation when it would reduce legal fees or costs
- Must be ADA accessible

# Agenda Requirements

- Brief description of each item (20 words or less ok)
- Reference what is sought regarding the item (approval, direction, information, etc)
- Date, time & location of meeting
- Post agenda 72 hours prior (or 24 hours for special meeting), accessible by public 24 hours a day

# Closed Session

- Brown Act limits closed session
- Behind closed doors - - a confidential meeting
- Must be noticed on the agenda
- Oral announcement of items to be discussed in closed session
- Reconvene in open session upon completion of closed session and may require reporting out (in certain instances)



# Closed Session & Lawyers

- Discussions in closed sessions will typically involve legal counsel
- Who provides the legal advice?
  - Regular Meeting: staffed by City Attorney or Deputy City Attorney
  - Hearings: City Attorney's Office will either advise the legislative body or represent the department in the proceedings.

# Rights of the Public Attendance

- To attend any public meeting with no conditions for attendance (e.g. registering, but voluntary sign-in ok)
- To record the meeting with audio or video recorder; take photographs
- To review agendas and other documents distributed to a majority of the board



# Rights of the Public Commenting

- To comment on any matters
  - Regular Meeting
    - Agenda Item: reasonable time limits can be adopted (e.g. 3 minutes)
    - Non-agenda items may be commented upon (non-agenda public comment), but no action or discussion can occur
      - Can refer to staff for information; request a report back; request item be placed on future agenda

# Public Comment - continued

- Special Meeting
  - Agenda Item
  - Non-agenda comment not required but permissible
- What about criticisms or complaints?
  - Must be allowed
  - Disruptive behavior does not have to be tolerated
- When should comments be allowed?
  - For agenda items - - before any action is taken

# Matters Not On the Agenda

- Cannot consider, discuss, deliberate or take action on matters not on the agenda, unless:
  - Majority vote determines an “emergency” exists (very narrow exception)
  - Two-thirds (4 of 5) vote determines the need to take immediate action arose after the agenda was posted

# Violations of the Brown Act



## ■ Civil Remedies

- Any interested party may sue (incl'g DA)
- Opportunity to cure and correct action(s)
- Action void if violation occurred
- Costs & attorney fees may be awarded

## ■ Criminal Penalties - Misdemeanor

- Intent to deprive public of information and take action in violation of Act
- Disclosure of closed session discussion

# Conclusion

- Meetings are to be open and public
- Actions & deliberations are to be in the open
- Social media post, texting and e-mailing are all subject to the Brown Act
- All persons have a right to attend and participate in the meetings
- Transparency and accountability

# Questions?

